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SCHWEITZER REJECTS CBM SETTLEMENT

By Clair Johnson

Gov. Brian Schweitzer said Friday that he will not sign a proposed settlement with Wyoming on coalbed methane water discharges into the Tongue River and other waterways in southeastern Montana.

"I didn't hear any level of support from Montana, and that's who I represent," Schweitzer said. "I'll take our chances in court."

The tentative settlement was not a good deal for the energy or ranching industries in Montana, and neither group supported the proposal, the governor said.

The proposal, Schweitzer said, was "on balance better for Wyoming."

While the proposed settlement would have protected water quality standards on Tongue River in Montana, there were no such protections for Hanging Woman and Badger creeks, which flow into Tongue, he said. Montana has told Wyoming that it needs protection for those creeks, too, he said.

Tentative settlement

The tentative settlement called for higher water quality standards along the Tongue River but lesser standards for the Hanging Woman and Badger tributaries and along the Powder River.

Schweitzer's announcement comes after months of negotiations between the two states to try to settle a federal lawsuit filed by energy companies in Wyoming. Litigation has been on hold while the talks were being held. The parties had a Nov. 30 deadline imposed by U.S. District Judge Clarence Brimmer in Cheyenne, but the states continued negotiating after that.

Energy companies including Pennaco Energy, Marathon Oil and Devon Energy sued the Environmental Protection Agency in 2006, seeking to overturn the agency's approval of Montana's numeric water quality standards for the Tongue and Powder rivers. The companies claim that EPA's approval was unconstitutional and an abuse of its discretion.

The companies allege that Montana's standards will harm coalbed methane development in the Powder River Basin. The Tongue and Powder rivers have headwaters in Wyoming and flow into Montana and eventually to the Yellowstone River.

Meeting Montana standards

The EPA's approval made Montana's 2003 standards enforceable under the Clean Water Act. As a result, companies operating in Wyoming have to make sure their discharges meet Montana's standards at the border.

Montana has said that if its standards are disregarded, discharges from Wyoming may make Montana's rivers unsuitable for irrigation and could limit its own energy development.

Drilling for methane found in coalbeds seams requires discharging huge volumes of groundwater to depressurize the coal. The groundwater tends to run high in sodium, which can damage certain crops and soils. Coalbed methane drilling has been much more extensive in Wyoming than in Montana, where development has been slower because of court challenges. And most of the resource-rich Powder River Basin lies in Wyoming.

Montana entered the suit on the side of the EPA to defend its standards, and Wyoming joined the suit on the side of the energy companies. Other parties that intervened included the Tongue River Water Users' Association, a group of Montana irrigators, and the Powder River Basin Resource Council in Wyoming.

Cara Eastwood, press secretary for Wyoming Gov. Dave Freudenthal, said Friday that the governor had not yet had a chance to review Schweitzer's decision and could not comment.

Attorneys representing the energy companies could not immediately be reached for comment.

Helena attorney Brenda Lindlief Hall, who represents the Tongue River Water Users' Association, praised Schweitzer's decision.

"It doesn't make sense to sign it," she said. "I think if the governor of Montana had signed that agreement, it would have been a screaming deal for Wyoming."

The last draft of the settlement, Hall said, would have changed water quality standards on the Tongue's tributaries and would have allowed "massive amounts of highly saline and sodic water to be discharged into those tributaries. That would certainly have adverse impacts on the ability to irrigate on water from those tributaries."

More than 1,200 acres are irrigated from Hanging Woman Creek, Hall said.

In 2003, the Montana Board of Environmental Review adopted numeric standards for measures of salinity in the Tongue and Powder rivers and their tributaries. The board further tightened water quality regulations on the waterways in 2006 by requiring review for nondegradation.

Energy companies unsuccessfully challenged those standards in Montana. State District Judge Blair Jones upheld the standards in a ruling last October. The companies are appealing Jones' ruling.